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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,958	11/01/2001	Prem Chandar	J6656(C)	6486

201 7590 10/22/2003

UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/22/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/998,958

Applicant(s)

CHANDAR ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4 and 6-12.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER

09/17/03

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 103 rejection is maintained for reasons of record in the Office Action mailed 7/22/03, Paper No. 8; b) Applicant argues, "The present invention excludes crystalline fatty acid and barrier ingredient, rather achieving retinoid stability with the specified polymeric emulsifier system". This argument is not persuasive. As pointed out in the previous Office Action, absent a clear indication in the specification or claims of what basic and novel characteristics are, "consisting essentially of", Applicant has the burden of showing that the introduction of additional steps or component would materially change the characteristics of Applicant's invention. The Examiner respectfully points out that Applicant has provided no evidence or scientific rationale showing that additional ingredients, such as those required by Habif et al., would materially affect the instantly claimed composition. The Examiner additionally points out that the Examples in the instant specification do not appear to consist essentially of a retinoid solubilized in a fluid oil and a polymeric emulsifier. Additionally, it is not understood how the composition consists essentially of a retinoid solubilized in a fluid oil and a polymer emulsifier, but can further comprise a humectant or an elastomer or a volatile silicone oil. How can the composition consist essentially of, when it comprises additional ingredients? .

Continuation of 10. Other: Applicant's deletion of claim 5 in the After Final Amendment does not materially affect the Rejection..